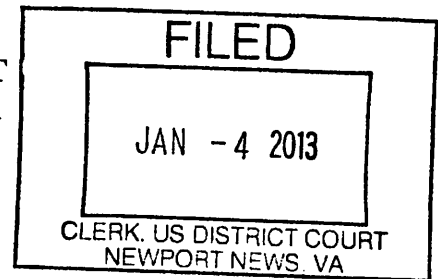


**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION**



SUSAN CHILDERS NORTH,

Plaintiff,

v.

CASE NO.: 4:13-CV-2

MERCANTILE ADJUSTMENT BUREAU, LLC

Defendant.

COMPLAINT

Susan Childers North ("Plaintiff") alleges on personal knowledge, investigation of counsel, and on information and belief as follows:

Introduction and Nature of Action

1. Plaintiff brings this action for statutory damages, injunctive relief and any other available legal or equitable remedies, resulting from the illegal actions of Mercantile Adjustment Bureau, LLC ("Mercantile"), a national collection agency, in negligently and/or willfully placing calls to Plaintiff on her cellular telephone without her prior express consent and not for emergency purposes (sometimes referred to herein as "illegal calls"), in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, ("TCPA").

2. Plaintiff is one such victim of Defendant's repeated illegal calls. Worst of all, Plaintiff does not even owe the debt at issue, as the calls are intended for a completely different individual. This is a problem faced by a large number of Americans and is summarized in a recent

New York Times posting, entitled “*When a Debt Collector Calls for Debt You Don’t Owe.*”¹

3. In 1991, Congress enacted the TCPA in an effort to combat the invasion of privacy faced by everyday Americans who received unwanted calls. In relevant part, the TCPA prohibits the use of an automatic telephone dialing system to call any telephone number assigned to a cellular telephone service absent an emergency purpose or the “prior express consent” of the called party. The Federal Communication Commission (“FCC”), the agency empowered to implement the TCPA, mandates that “the burden will be on the creditor to show it obtained the necessary prior express consent.”²

Jurisdiction and Venue

4. This Court has jurisdiction of cases arising under the TCPA based on federal question under 28 U.S.C.S. § 1331. *Mims v. Arrow Financial Services, LLC*, 132 S. Ct. 740; 181 L. Ed. 2d 881; 2012 U.S. LEXIS 906.

5. Venue is proper in the United States District Court for the Eastern District of Virginia, Newport News Division pursuant to 28 U.S.C. § 1391 because the events giving rise to Plaintiff’s claims against Defendant occurred in James City County, Virginia.

Parties

6. Plaintiff is, at all times mentioned herein was, an individual citizen of the State of Virginia, and a resident of James City County. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(10).

¹Jennifer Schultz, *When a Debt Collector Calls for Debt You Don’t Owe*, N.Y. Times, Nov. 1, 2010. (Available at, <http://bucks.blogs.nytimes.com/2010/11/01/when-a-debt-collector-calls-for-debt-you-dont-owe/>)

²*In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, at ¶ 10 (2008).

7. Mercantile is a “person,” as defined by 47 U.S.C. § 153(10).

8. Mercantile is a Virginia limited liability company. It is doing business throughout the country including James City County, Virginia where it repeatedly telephoned Plaintiff.

9. Mercantile’s registered agent is located in Glen Allen, VA.

Plaintiff’s Factual Allegations

10. Defendant made at least twenty-seven (27) calls to Plaintiff’s cellular phone during the last year.

11. These illegal cellular calls made to Plaintiff by Defendant were intended for a person other than the Plaintiff.

12. Plaintiff has incurred monetary charges for these illegal calls. The FCC has made clear that “wireless customers are charged for incoming calls whether they pay in advance or after the minutes are used.”³

13. Mercantile used an “automatic telephone dialing system and/or an artificial or prerecorded voice” as prohibited by 47 U.S.C. § 227(b)(1)(A) to make the calls which are the subject of this suit.

14. These calls were for the purpose of collecting an alleged debt due by someone other than Plaintiff and were not made for emergency purposes as set forth in 47 U.S.C. § 227(b)(1)(A).

15. Plaintiff did not provide “prior express consent” to receive the calls on her cellular telephone as set forth in 47 U.S.C. § 227(b)(1)(A).

³*In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 23 F.C.C.R. 559, at ¶ 7 (2008).

16. These illegal calls placed by Mercantile were in violation of 47 U.S.C. § 227(b)(1).

COUNT I

(Negligent Violations of the TCPA)

17. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

18. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

19. As a result of Defendant's negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled to statutory damages of \$500 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

20. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

COUNT II

(Knowing and/or Willful Violations of the TCPA)

21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

22. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

23. The Internet is replete with discussions between other victims desperate to end Defendant's calls. The following is a sample, evidencing Defendant's egregious violations of the

TCPA, and the resulting invasion of privacy suffered by many individuals between October 2008 and August 2012:

“gr

October 25, 2008 for 716-929-8200

asking about someone named george risha and lives at my address - he has never lived here...but they say his social ending they give last 4 of social and my phone number, I think this person is harassing us and if it continues I will sue him and this company “Mercantile Adjustment ctr”

(Available at, <http://www.callferret.com/mercantile-adjustment-bureau-mab.html>)

“hvyhitter

27 Feb 2009

Yeah I called them back from their same number. Said I don’t know why someone is calling this number it is my cellphone that I don’t give out to people.

He said...what is your number...I told him the right one. He goes. Ok...this is the last known number of a Mr Hightower that obviously isnt you I will go ahead and remove that number from our calling list. This is a “skip trace” service and we are contacting people at their last known numbers. So. Yeah we will see if I get anymore calls.”

(Available at, <http://800notes.com/Phone.aspx/1-877-254-0943/3>)

“sj

20 Apr 2010

We have been receiving these calls 4-5 times per day. Sometimes when the machine picks up they just hang up, and sometimes they leave a message to call the 877-254-0943 number. They say it is Mercantile Adjustment Bureau, a debt collection company. We don’t owe anyone anything. We don’t call back. They are really a pain in the tush.”

(Available at, <http://whocallsme.com/Phone-Number.aspx/8772540943/4>)

“MC

29 Sept 2011

I just picked up a voicemail saying, if you are not “Deadbeat X Husband’s Name” please disconnect the call. By staying on the line, you are acknowledging that you are “Deadbeat X Husband’s Name”....so I hung up”

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/3>)

“Emily Craig

4 June 2011

This is from Mercantile Adjustment Bureau, they are trying to collect debt from a "Deborah Merseer." I have tried to explain to them I am not this person, I don't have any existing bills I haven't paid. The automated voice person on the phone is so aggravating, they call 2 times a day and of course I pick up my husband is out of the country and calls from different phone numbers all the time. I have been "taken off the calling list" and I still get phone calls 4 times a day, the last time i tried to call Tammy back to tell her I'm not Deborah Merseer for the last time her voice mail box was full! What this tells me is that a million people are calling her back to tell her they're not the person they're looking for! PLEASE END THIS BULL."

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/3>)

"Colorado Springs, CO

18 June 2011

Every morning this 800 Service/ 877-230-8371 wake me up asking for Jefrey Lopez I don't know who's Jefrey Lopez, I told them many times that I don't know who's Jefrey Lopez and what he does is to laugh. and he keeps asking for that person. I would like to know how can SUE this company or marketing for a haressment over the phone."

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/3>)

"StudioMan36

1 Feb 2011

I've been receiving calls daily from this number since November 2010 and now I'm fed up with them! You'd think they'd get the message when nobody responds after months! So, I took action.

I replied to their callback number 866-809-7506 on a Saturday afternoon. (hoping that no one would answer and I could just leave a voicemail ... and I was right) I told them that such-and-such person "that you have been calling for does not live at this address and since you have called daily since November 2010, I will report both numbers 877-230-8371 and 866-809-7506, as well as a copy of the voicemail that you leave daily, to the FCC. So please remove me from your list!" Haven't received a call since."

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/2>)

"Alan

1 may 2012

getting calls from this company for 2 + years for a party that doesn't live here.. we are on the DO NOT CALL REGISTRY,,this is illegal, and the shame of it is there is nobody to enforce these scumbags from stop calling or to fine them for breaking the

law”

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/4>)

“Yinsi Gittings

15 May 2012

constant calls at home and have begun at my place of employment for a debt that I do not owe”

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/4>)

“Alice

1 Aug 2012

my number is on the do-not-call list, and this number keeps calling me for a jeffery m moore. don't know or ever heard of such a person. they proceed to say if you are not jeffery m more, disconnect this call now. i do this and they still keep calling my number. any ideas how i can stop this?”

(Available at, <http://800notes.com/Phone.aspx/1-877-230-8371/4>)

24. As a result of Defendant’s knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff is entitled to treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

25. Plaintiff is entitled to and seeks injunctive relief prohibiting such conduct in the future.

Prayer for Relief

26. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff the following relief against Defendant:

- a. An Order issuing an injunction, pursuant to 47 U.S.C. § 227(b)(3)(A), enjoining Defendant from placing any further illegal calls to Plaintiff and requiring compliance with the TCPA.
- b. As a result of Defendant’s negligent violations of 47 U.S.C. § 227(b)(1),

Plaintiff seeks \$500 in statutory damages, for each and every violation (each illegal call), pursuant to 47 U.S.C. § 227(b)(3)(B).

- d. As a result of Defendant's willful and/or knowing violation of 47 U.S.C. § 227(b)(1), Plaintiff seeks as treble damages, as provided by statute, an additional \$1,000 for a total of \$1,500 for each and every violation (each illegal call), pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- e. Such other relief as the Court deems just and proper.

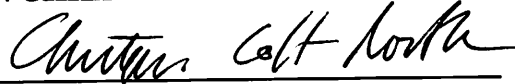
Trial by Jury

- 27. Plaintiff demands a jury trial on all claims.

Dated:

1/2/13

SUSAN CHILDERS NORTH



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